

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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*IN RE* TERRORIST ATTACKS ON SEPTEMBER 11, 2001

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MDL No. 1570

THOMAS E. BURNETT, SR., *et al.*,

Plaintiffs,

v.

C.A. No. 03 CV 9849 (RCC)

AL BARAKA INVESTMENT AND DEVELOPMENT  
CORPORATION, *et al.*,

Defendants.

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**DEFENDANTS SOLIMAN H.S. AL-BUTHI AND PEROUZ SEDAGHATY'S  
RESPONSE TO DECLARATION OF MICHAEL ELSNER**

Defendants Soliman H.S. Al-Buthi (D59) and Perouz Sedaghaty (D60), by and through undersigned counsel, respectfully submit their response to the Declaration of Michael E. Elsner (May 27, 2004) (MDL Docket No. 168) ("Elsner Declaration").

The *Burnett* plaintiffs, through the Elsner Declaration, and Mr. Motley's statements during the May 25, 2004 status conference, have misrepresented statements made by counsel for Messrs. Al-Buthi and Sedaghaty during the May 12, 2004 motions hearing regarding the office of the Al Haramain Islamic Foundation, Inc. (U.S.A.) ("AHIF"). During that hearing, plaintiffs' counsel made the inaccurate statement that AHIF's "office has been closed by the United States government." See Transcript of May 12, 2004 motions hearing, at 39, line 5 (excerpts attached and incorporated hereto as Exhibit 1). Ms. Bernabei, in response, stated that although "the assets have been frozen" by the government, AHIF's office "still exists today," and that the U.S. government had this address. Id. at 39, lines 11-12; 41, line 19.

On May 13, 2004, pursuant to this Court's order during the status conference, counsel provided the *Burnett* plaintiffs' counsel with the business address of AHIF, i.e., 3800 S. Highway 99, Ashland, Oregon 97520. See Letter from L. Bernabei to Judge Casey (May 13, 2004). Counsel also noted that the plaintiffs already had this information through AHIF's document production, which was served on the plaintiffs on April 26, 2004, two weeks prior to the May 12, 2004 motions hearing.

In response to the Elsner declaration, Messrs. Al-Buthe and Sedaghaty are submitting the declarations of David Berger, an attorney in Ashland, Oregon, who provided legal services to Mr. Sedaghaty, and Mr. Sedaghaty, the resident director of AHIF. These declarations set forth their personal knowledge of AHIF's business operations and activities at the 3800 S. Highway 99 address. See Declaration of David F. Berger (May 28, 2004); Declaration of Perouz Sedaghaty (May 28, 2004) (attached and incorporated herein as Exhibits 2-3). Mr. Berger has been to this office a number of times over the past several years, including at the time that the U.S. government executed its search warrant. See Berger Dec. (Ex. 2), at ¶¶ 4-9.

Contrary to the *Burnett* plaintiffs' claim that the 3800 S. Highway 99 address "is a personal residence," and that "[i]t does not appear that Al Haramain maintains a physical office in Ashland, Oregon," see Elsner Declaration, at ¶ 3, the U.S. government has specifically regarded this address as AHIF's business office. See Berger Dec. (Ex. 2), at ¶ 7. Indeed, AHIF's accountant provided information to the U.S. government that this was AHIF's business address. Id. at ¶ 7 & Att. A at ¶13. The U.S. government's own affidavit in support of the search warrant for AHIF's records specified this address, and the warrant was executed at this address. Id. This is the same address undersigned counsel provided to the Court and the *Burnett*

plaintiffs.

Moreover, AHIF has used this property as its business address since 1999, and has carried out its operations, which are well known in the local community, at that address. Id. at ¶¶ 4-9; see also Sedaghaty Dec. (Ex. 3), at ¶¶ 3-9. Because of several threats and vandal attacks after the September 11, 2001 attacks, it became necessary to lock the entry gate. See Berger Dec. (Ex. 2), at ¶ 6; Sedaghaty Dec. (Ex. 3), at ¶ 7. However, access to the offices can be obtained through contacting Mr. Berger. See Berger Dec. (Ex. 2), at ¶ 9.

Therefore, the U.S. government's own records, as well as the declarations of individuals with knowledge of AHIF's business operations, confirm that 3800 S. Highway 99, Ashland, Oregon, continues to be the business address of AHIF.

Counsel for plaintiffs could have contacted counsel for defendants if they had questions about this office address, without burdening this Court unnecessarily with these pleadings.

Respectfully submitted,

/s/ Lynne Bernabei

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DATED: May 28, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2004, I caused the foregoing to be served electronically on counsel of record by the Court's Electronic Case Filing (ECF) System.

/s/ Alan R. Kabat

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Alan R. Kabat